

REMARKS

Claims 1-18 are pending in the subject application.

Claims 1 and 2 are amended to further describe the subject matter of the present invention. Support for the amendment to claim 1 is found in the specification at the paragraph beginning at page 2, line 30; page 5, line 38 and page 11, line 25. Support for the amendment to claim 2 is found in claims 3-6, as the subject matter of claims 3-6 was incorporated into claim 2.

Claims 3-6 are canceled, without prejudice.

Claims 7 and 9-11 are amended to provide proper claim dependency in view of the cancellation of claims 3 and 5.

Claims 13 and 14 are amended to further describe the subject matter of the present invention by replacing the term "defined axis" with --cylinder axis--. Support for the amendment to these claims are found in the specification in paragraphs beginning at page 3, line 19; page 9, line 33 and page 13, line 6. No new matter is added.

On the basis of the amendment, claims 1, 2 and 7-18 are pending in the subject application.

Applicant respectfully requests reconsideration of the pending claims in light of the above claim amendment taken along with the following remarks.

Drawing Objection Under 37 CFR 1.83(a):

The drawings were objected to under 37 CFR 1.84(p)(5) because they included the reference character 75 that was not mentioned in the description. Responsive to the Examiner's objection, applicant has amended the specification to include the reference character 75 in the description. Support for the amendment is found in Figs. 1 and 2. Therefore, applicant respectfully requests reconsideration and withdrawal of the drawing objection.

Rejection Under 35 U.S.C. § 112:

Claims 13 and 14 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite to particularly point out and distinctly claim the subject matter which applicant regards as the invention, for reasons in pages 3 and 4 of the April 8, 2005 Office Action (hereinafter Office Action). Applicant traverses on the basis of the amendment to claims 13 and 14.

The specification supports claim 13, as the sentence beginning at page 3, line 19 recites that: "the attachment piece 30 can be turned relative to the hollow body 10 about the cylinder axis, which lies substantially perpendicular to the axis of the respiratory gas flow A directed into the hollow body 10." Further, the specification, at page 13, line 16 provides that: "[t]he attachment piece 30 which can be turned relative to the hollow body 10 about the cylinder axis could also have and [sic] a closure means in the form of an extension at the lower periphery, by means of which the second opening 71 can be closed by turning." Accordingly, the elements of claim 13 are supported by the specification.

The specification also supports claim 14, as the sentence beginning at page 9, line 33 recites that: "[a]ccording to a further preferred development, the defined axis (cylinder axis) lies substantially perpendicular to the axis of respiratory gas flow and medicament flow directed to the hollow body. This results in a rebound effect on the cylinder wall, which effect assists in thorough mixing." Accordingly, the elements of claim 14 are supported by the specification.

Therefore, applicant respectfully requests reconsideration and withdrawal of the 35 U.S.C. § 112 rejection to claims 13 and 14.

Rejection Under 35 U.S.C. § 102:

Claims 1, 3, 4, 9, 11 and 12 are rejected under 35 U.S.C. § 102(b) as being anticipated by Moa et al (U.S. Patent No. 5,193,532; hereinafter Moa) for reasons in pages 4 to 5 of the Office Action. Applicant respectfully traverses this rejection.

To anticipate a claim, a single reference must contain all of the elements of the claim. The reference must clearly and unequivocally disclose the claimed invention or direct those skilled in the art to the claimed invention without any need for picking,

choosing and combining disclosures. Applicant respectfully submits that Moa does not disclose applicant's device as claimed in claim 1, as amended.

In contrast, Moa discloses a first opening in first branch channel (13) for introducing a respiratory gas flow under overpressure and a second opening in second branch channel (12) for removal of the exhaled respiratory gas flow. Further, a person skilled in the art would not consider introducing a medicament flow into the second opening of Moa, because this would impede the removal of the exhaled respiratory gas and the introduction of that medicament flow, since each cycle of exhaling the medicament flow would be counteracted. Accordingly, Moa does not disclose amended claim 1, *inter alia*, a device for generating a continuous positive airway pressure (CPAP device), in particular a nasal CPAP device (nCPAP device), with a first opening (20) provided in a first side wall of the hollow body (10) and used for introduction of a respiratory gas flow (A) under said overpressure directed into the hollow body (10) and for removal of the exhaled respiratory gas flow (B). Further, since claims 9, 11 and 12 are dependent on claim 1, Moa also does not disclose the instant claims 9, 11 and 12.

Therefore, applicant respectfully requests reconsideration and withdrawal of the rejection to claims 1, 9, 11 and 12 under 35 U.S.C. § 102(e) as being anticipated by Moa.

Rejection Under 35 U.S.C. § 103:

Claims 5-8 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Moa for reasons in pages 6-8 of the Office Action. Applicant respectfully traverses this rejection.

The motivation to modify the prior art must flow from some teaching in the art that suggests the desirability or incentive to make the modification needed to arrive at the claimed invention. There is no such teaching in Moa.

It is clear from the above discussion (relative to the rejection under 35 U.S.C. § 102) that claim 1 is patentable over Moa. Since claims 7, 8 and 10 are dependent on base claim 1, these claims are also patentable over Moa.

Applicant respectfully requests reconsideration and withdrawal of the rejection to claims 7, 8 and 10 under 35 U.S.C. § 103(a).

Claims 2 and 15-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Moa in view of WO9924101 (hereinafter Werner) for reasons in pages 8-10 of the Office Action. Applicant respectfully traverses this rejection.

With respect to Moa, the person skilled in the art would likely only consider guiding a medicament flow into the gas channel before the gas channel meets the second branch. With respect to Werner, the person skilled in the art would likely only consider mixing the medicament flow into the respiratory gas flow in pipe 75 of Fig. 2.

Claim 2 has been amended to incorporate the subject matter of claims 3 to 6. Since Moa does not disclose a hollow body, but only a breathing channel (10) which has two branch-channels (11, 12) and a gas channel (13), Moa does not teach or suggest claim 2. Moreover, Moa does not disclose that a pipe projects so far into the inside of a hollow body that it forms a break-up edge in the interior with an offset to the wall of the hollow body. By this feature, an additional vortex effect may be obtained which cannot be achieved by the device disclosed by Moa. Werner does not cure the deficiency of Moa in arriving at the instant amended claim 2. This is because the introduction of a second pipe (70) forms a break-up edge in the interior of the hollow body provides a much more efficient solution of the medicament flow in the respiratory gas flow and is not taught or suggested by Moa or Werner. Accordingly, Moa in view of Werner does not teach or suggest the instant amended claim 2, *inter alia*, the device characterized in that the hollow body basically has the shape of a hollow cylinder on whose one end surface the attachment piece can be fitted and on whose circumferential surface the first and second openings are provided, the first and second openings lie at approximately the same height, so that the respiratory gas flow (A) directed into the hollow body and the medicament flow (M) directed into the hollow body at least partially intersect in an area before they impact the inner wall, and a pipe is inserted into the second opening and projects so far into the inside of the hollow body that it forms a break-up edge in the interior with an offset to the wall of the hollow body for the respiratory gas flow (A) directed into the hollow body.

Moreover, since amended claim 2 is patentable over Moa in view of Werner, claims 15-17 dependent thereon are also patentable over Moa in view of Werner.

Additionally, applicant submits that Werner should be disqualified as a prior art reference under 35 U.S.C. § 103(c), as the present invention and Werner, at the time the present invention was made, were owned by Med In Medical Innovations GmbH.


Accordingly, applicant respectfully requests reconsideration and withdrawal of the rejection to claims 2 and 15-18 under 35 U.S.C. § 103(a).

Conclusion:

For the foregoing reasons, the present application, including claims 1, 2 and 7-18, is believed to be in condition for allowance. The Examiner's early and favorable action is respectfully requested.

If a telephone conference would be of assistance in furthering prosecution of the subject application, applicant requests that the undersigned be contacted at the number below.

Respectfully submitted,



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